

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Oct 28, 2015

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

LUIS FERNANDO CALVILLO,

Defendant.

No. 1:15-CR-2053-SMJ

**AMENDED ORDER ADOPTING
REPORT AND
RECOMMENDATION, SETTING
SENTENCING, AND
ESTABLISHING SENTENCING
BRIEFING SCHEDULE**

Before the Court is Magistrate Judge Hutton's October 5, 2015 Report and Recommendation, ECF No. 29, recommending that the Court find Defendant's plea of guilty is knowing, intelligent, and voluntary and is not induced by fear, coercion, or ignorance. No objections have been filed.

After reviewing the Report and Recommendation and relevant authorities, the Court finds the Magistrate Judge's findings are correct. Therefore, the Court adopts the Report and Recommendation in its entirety. However, acceptance of the Rule 11(c)(1)(C) plea agreement is deferred until sentencing when the Court will have the benefit of a Presentence Investigation Report.

Accordingly, **IT IS HEREBY ORDERED:**

- 1 **1.** The Report and Recommendation, **ECF No. 29**, is **ADOPTED** in its
2 entirety.
- 3 **2.** The Court finds that Defendant's guilty plea to Count 1 is knowing,
4 intelligent, and voluntary and is not induced by fear, coercion, or
5 ignorance. The Court finds this plea is given with the knowledge of
6 the charged crime, the essential elements of the charged crime, the
7 Government's evidence of the charged crime, and the consequences
8 of pleading guilty. The Court further finds that the facts admitted to
9 by Defendant in open court constitute the essential elements of the
10 crime charged.
- 11 **3.** Defendant's guilty plea to Count 1 is **ACCEPTED**.
- 12 **4.** All pending motions are **DENIED AS MOOT**.
- 13 **5.** The trial date is **STRICKEN**.
- 14 **6.** In the event an Order is entered permitting withdrawal of the guilty
15 plea, Speedy Trial Act time will be calculated consistent with 18
16 U.S.C. § 3161(i).
- 17 **7.** The date of the sentencing is **Wednesday, January 13, 2016**, at
18 **11:00 AM** in **YAKIMA**.
- 19 **8.** If a sentence of incarceration is imposed, Defendant shall be placed
20 in custody at the time of sentencing. Sentencing will be scheduled

1 for a total of forty-five (45) minutes. If it is believed that the
2 sentencing hearing will last longer, counsel shall contact Chambers
3 within fourteen (14) days of disclosure of the presentence
4 investigation report. Pending sentencing, Defendant's detention
5 status or release status shall remain pursuant to this court's previous
6 order. The United States Probation Office shall prepare a timely
7 presentence investigation report that will comply with the following
8 schedule:

- 9 1. Not less than **thirty-five (35) days** prior to the sentencing
10 hearing, the probation officer shall disclose the pre-sentence
11 investigation report to the Defendant, counsel for Defendant,
12 and the Government.
- 13 2. Within **fourteen (14) days** of the disclosure of the pre-
14 sentence investigation report, counsel shall communicate in
15 writing to the probation office any objections they may have as
16 to factual errors or omissions; sentencing classifications;
17 sentencing guideline ranges; and policy statements contained
18 in or omitted from the report. Such communication may be
19 oral initially but shall immediately be confirmed in writing to
20 the probation officer and opposing counsel.

1 3. Also within **fourteen (14) days** of disclosure of the
2 presentence investigation report, counsel shall file and serve all
3 motions and memoranda pertaining to Defendant's sentence,
4 including motions for downward or upward departures.
5 Counsel shall utilize the following format when preparing
6 initial memoranda which are limited to twenty pages (absent
7 prior Court permission to file an overlength brief): I. Base
8 Offense Level & Enhancements, II. Departures, III. 18 U.S.C.
9 3553(a). Under the "Base Offense Level & Enhancements"
10 section, counsel shall discuss whether the PSIR's Total Offense
11 Level calculations (not including departures) are correct or
12 incorrect, providing legal authority for the party's position.
13 Under the "Departure" section, counsel shall discuss whether a
14 downward and/or upward departure is warranted under the
15 Guidelines and provide legal authority for such position.
16 Under the "18 U.S.C. 3553(a)" section, counsel shall discuss
17 whether the resulting guideline range provides a reasonable
18 sentence sufficient, but not greater than necessary, to comply
19 with the purposes set forth in 18 U.S.C. 3553(a)(2),
20 considering the other factors listed in 3553(a). The parties are

1 limited to one reply of no more than 7 pages. No other
2 pleadings are allowed without advance permission of the
3 Court. **FAILURE TO FILE AND SERVE A MOTION**
4 **FOR DOWNWARD DEPARTURE WITHIN 14 DAYS OF**
5 **RECEIPT OF THE PRESENTENCE INVESTIGATION**
6 **REPORT WILL BE DEEMED A WAIVER OF THE**
7 **RIGHT TO DO SO.** The time frame for filing and serving
8 responses to such motions shall be governed by Local Criminal
9 Rule 45. Any request with regard to self-reporting shall be
10 made to the probation office at the same time any
11 objections/motions are filed.

12 4. After receiving counsel's objections, the probation officer shall
13 conduct any further investigation and make any revisions to
14 the presentence report that may be necessary. The probation
15 officer may require counsel for both parties to meet with the
16 officer to discuss unresolved factual and legal issues, and
17 counsel shall make themselves available for that purpose.

18 5. At least **ten (10) days** prior to the date of the sentencing
19 hearing the probation officer shall submit the presentence
20 report to the sentencing judge. The report shall be

1 accompanied by an addendum setting forth any objections
2 counsel may have made, including those that have not been
3 resolved, together with the officer's comments and
4 recommendations thereon. The probation officer shall certify
5 that the contents of the report other than sentencing
6 recommendations, including any revisions or addenda, have
7 been disclosed to counsel for Defendant and the Government,
8 and that the addendum fairly states any remaining objections.

9 6. Except with regard to any written objection made under
10 subdivision (a), the report of the presentence investigation and
11 computations shall be accepted by the Court as accurate. For
12 good cause shown, however, the court may allow a new
13 objection to be raised at any time before the imposition of
14 sentence. In resolving disputed issues of fact, the court may
15 consider any reliable information presented by the probation
16 officer, Defendant, or the Government.

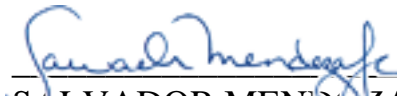
17 7. Nothing in this rule requires the disclosure of any portions of
18 the presentence report that are not disclosable under Rule 32 of
19 the Federal Rules of Criminal Procedure.
20

1 8. The presentence report shall be deemed to have been disclosed
2 (1) when a copy of the report is physically delivered; or (2) one
3 day after the availability of the report for inspection is orally
4 communicated; or (3) three days after a copy of the report, or
5 notice of its availability is mailed to counsel, whichever date is
6 earlier.

7 9. Following sentencing, Defendant shall be taken into the
8 custody of the United States Marshal Service unless (1)
9 Defendant has been released prior to sentencing, (2) Defendant
10 specifically requests the opportunity to self-report, and (3)
11 Defendant demonstrates that he is a candidate for self-
12 reporting. If Defendant requests the opportunity to self-report,
13 Defendant must demonstrate the financial ability to travel to a
14 facility on the East Coast.

15 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this order
16 and to provide copies to counsel, the U.S. Probation Office, the U.S. Marshals
17 Service, and Magistrate Judge Hutton.

18 **DATED** this 28th day of October 2015.

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 SALVADOR MENDEZ, JR.
 United States District Judge